pelled to pay for a permanent injury, though subsequently he may remove the cause of the damage. The tendency of the rule would seem to be to encourage litigation rather than to diminish it. Fifth, the difficult question of determining what is and what is not a permanent nuisance must be solved by landowners and courts. The difficulty of solving this question appears from the fact that while most jurisdictions following the prevailing rule hold that a railroad embankment is such a nuisance, they also hold that a sewer is not.[8]

The view of the English and California courts has simplicity and logic to recommend it. While it may be urged that it is a hardship for the injured landowner to be forced to bring successive actions for the continuance of a nuisance, in practice such actions do not seem to be brought. A single recovery usually results in a permanent settlement. Moreover, it may be suggested that the requirement of separate actions is a reasonable penalty for the plaintiff's omission to demand an injunction.

A. H. C.

PRACTICE: SETTING ASIDE DEFAULT JUDGMENT.—"When a party after the time expressly granted for filing a pleading against him has expired, suffers further time to elapse without taking any action thereon and in the mean time the pleading is served and filed, he, by such conduct, in effect grants the additional time and the party is not strictly in default."

This dictum is quoted from the case of Reher v. Reed[1] in the Supreme Court of California. It has been understood to be the general practice in this state that a motion to strike a late pleading from the files would be entertained. Does this interpretation of Section 585 of the California Code of Civil Procedure mean that a pleading filed at any time before default is entered is immune from attack on account of delay?[2] The phrase "strictly in default" is not conclusive.

The point is of relatively little consequence in view of the discretion vested in the courts with respect to the setting aside of default judgments,[3] and the fact that a verified answer, denying the averments of the complaint, is even preferable to an affidavit of merits upon which to base a motion to set aside a default.[4]

M. K. W.

---

[8] See cases cited in 10 Ann. Cas. 184.

[1] (Dec. 10, 1913) 46 Cal. Dec. 524.

[2] See Woolsey v. Memphis and Charleston R. R. Co., (1856) 28 Ala. 536.

[3] California Code of Civil Procedure, Section 473.

[4] Reher v. Reed, supra. Melde v. Reynolds, (1900) 129 Cal. 308, 314.